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12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 JAMIE BEECHUM, JEANNIE HART  
17 and MONICA HERVEY on behalf of  
18 themselves and all others similarly  
situated,

19 Plaintiffs,

20 v.

21 NAVIENT SOLUTIONS, INC., and  
22 DOES 1THROUGH 10,  
23 Defendants.

CASE NO: 2:15-cv-8239

CLASS ACTION

AMENDED NOTICE OF  
PENDENCY OF OTHER ACTION  
(LOCAL RULE 83-1.4)

1 Additional Counsel of Record

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1 Plaintiffs Jamie Beechum, Jeannie Hart and Monica Hervey filed a Notice of  
 2 Pendency of Other Action under Local Rule 83-1.4 concurrently with the filing of  
 3 the complaint in this action to bring to the Court's attention a matter pending in the  
 4 Northern District of California, *Ubaldi v. SLM Corp., et al.*, which involves "a  
 5 material part of the subject matter" of this action. Central District Local Rule 83-1.4;  
 6 see ECF 6 (Notice of Pendency of Other Action).

7 Plaintiffs, by counsel, file this Amended Notice of Pendency of Other Action  
 8 to provide further information to this Court regarding the other action to ensure  
 9 full compliance with both the spirit and letter of Local Rule 83-1.4.

10  
 11 **Other Pending Action**

12 *Ubaldi, et al., v. SLM Corp., et al.*, Case No. 2:11-cv-1320-EDL (N.D. Cal.)

13  
 14 **Parties**

15 The parties to the *Ubaldi* matter are:

16 (1) Plaintiffs Tina M. Ubaldi, Chanee Thurston, Dana L. Barone and Sara  
 17 Bachman-Williams and

18 (2) Defendants SLM Corporation; Sallie Mae, Inc.; and SLM PC Student  
 19 Loan Trust 2004-A.<sup>1</sup>

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 24  
 25 <sup>1</sup> Since the filing of the *Ubaldi* action, two of the defendants, the SLM  
 26 Corporation and Sallie Mae, Inc. have been merged with and into successor entities.  
 27 Specifically, the SLM Corporation has merged with and into Navient Corporation,  
 28 and Sallie Mae, Inc., has merged into Navient Solutions, Inc., a defendant in the  
 present action. The *Ubaldi* action has continued in the names of prior entities, as  
 there has not been a formal substitution of parties under Fed. R. Civ. P. 25(c).

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18       **Factual Statement Under L.R. 83-1.4.2(e)**

19       *Ubaldi* is a class action alleging that Defendant Sallie Mae Inc., and its  
20       successor, Navient Solutions, Inc., violated California law by charging non-  
21       compensatory, punitive late fees on private student loans made to California  
22       residents. The Third Amended Complaint in *Ubaldi* added an additional plaintiff  
23       who alleged state law claims for charging usurious interest, as did a subsequent  
24       Complaint In Intervention, which added two additional plaintiffs. *Ubaldi*, ECF 172,  
25       206.

26       The *Ubaldi* Court subsequently denied Plaintiffs' motion for class  
27       certification of the usury claims, including a claim under Bus. & Prof. Code § 17200,  
28       *et al.*, agreeing with Defendants that Plaintiffs lacked standing as to any usury  
related claims because none of the named Defendants owned their loans. *Ubaldi*,  
ECF 242. The Court also denied the intervenors' subsequent motion to file an  
amended complaint in intervention to add the owners of their loans as defendants.

1 *Ubaldi*, ECF 257. Because Defendants raised the standing issue in their opposition  
2 to Plaintiffs' renewed motion for class certification, rather than by a motion to  
3 dismiss, the individual usury claims technically remain outstanding. There will be  
4 no further substantive proceedings regarding the individual usury claims, however,  
5 given the Court's ruling that Plaintiffs lack standing for their usury claims as to any  
6 of the named defendants.

7 The *Ubaldi* Court did certify two classes as to the late fee claims, which are  
8 not at issue here, and the proceedings as to the late fee claims are continuing.  
9 *Ubaldi*, ECF 242.

10 The present case is a putative class action alleging that Defendant Navient  
11 Solutions, Inc., and its predecessor, Sallie Mae, Inc., violated California law by  
12 charging interest at a rate exceeding 10% per annum on private student loans made  
13 to California residents, and receiving payment of such interest. Plaintiffs also seek  
14 to bring their usury claims against the owners of their loans, but because they have  
15 not yet been able to determine what entities own their loans, they have named Doe  
16 defendants and will seek leave to amend upon learning that information.

17 The private student loans at issue in both actions were originated pursuant to  
18 an agreement between the Student Loan Marketing Association ("SLMA") and  
19 Stillwater National Bank and Trust Company ("Stillwater"), called the ExportSS®  
20 Agreement.

21 Plaintiffs in *Ubaldi* contend that their late fee claims are not subject to  
22 preemption under the National Bank Act ("NBA"), 12 U.S.C. § 85, because under  
23 the terms of the ExportSS® Agreement, and as implemented, their loans were *not*  
24 made by a national bank, and instead were in fact made by the SLMA, a non-bank  
25 entity, which was the actual lender, and that the lender listed on their loan  
26 contracts, Stillwater National Bank and Trust, was a nominee.

27 Plaintiffs in the present action similarly contend that their usury claims are  
28 not subject to preemption under the NBA for these same reasons.

1 Plaintiffs in the present action further contend that their loans are subject to  
2 and not exempt from the California usury limit of 10% per annum, because under  
3 California law, the substance of the transaction was that the loans were *not* made by  
4 a national bank, and were instead made by the SLMA, and that the lender listed on  
5 their loan contracts, Stillwater National Bank and Trust, was a nominee used by the  
6 SLMA to circumvent California law.

7 Thus, the present action and the *Ubaldi* action involve a material part of the  
8 same subject matter in that both cases present the question of whether, under the  
9 terms of the ExportSS® Agreement, and as implemented, the loans were in fact  
10 made by the SLMA, and thus are not subject to preemption under the § 85 of the  
11 NBA. Further, if class certification were granted as to the usury claims advanced by  
12 Plaintiffs in the present action as to Defendant Navient Solutions, Inc., the class  
13 would potentially include the usury plaintiffs in *Ubaldi*.

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15 DATED: October 22, 2015

Respectfully submitted,

16 By: /s/ William J. Genego

17 Counsel for Plaintiffs  
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